immaterial. That he does owe such a duty can scarcely be doubted, and his failure to perform it, though it may be regarded as non-feasance so far as his principal is concerned, is clearly mis-feasance so far as the third person injured by it is concerned.

CONSTITUTIONAL LAW—BIBLE READING IN THE PUBLIC SCHOOLS.—The interesting and important question, whether a taxpayer and patron can prevent the reading of the Bible in the public schools, was involved in the recent case of *State* v. *Scheve* (1902), — Neb. —, 91 N. W. Rep. 846. The constitution of Nebraska provides that no person shall be compelled to support any place of worship against his consent, and also that "no sectarian instruction shall be allowed in any school supported, in whole or in part, by public funds." In a certain district the board permitted the teacher to engage daily, during the school hours, in opening exercises, consisting of reading from the King James' version of the Bible, singing religious hymns, and prayer. The action was an application for mandamus, by a patron and taxpayer, to require a discontinuance of the practice. The court held that these exercises were in violation of the relator's constitutional rights, and should be discontinued. A majority of the court were of opinion that the constitutional provisions referred to were violated in two ways—first, that these exercises constituted religious worship, and thus required the relator to support a place of worship; and, second, that they constituted sectarian instruction within the meaning of the constitutional provision. A minority of the court differed as to the first point, but concurred as to the second.

The same general question has several times been before the courts, and their decisions are not altogether harmonious, though the disagreement is more apparent than real. Much, of course, must depend upon the particular phraseology of the constitution involved. The question came before the supreme court of Wisconsin in 1890, in the case of *State* v. *District Board*, 76 Wis. 177, 44 N. W. 967, 7 L. R. A. 330, 20 Am. St. Rep. 41. The constitution of that state contains numerous provisions to insure religious liberty, but especially, two provisions identical with those involved in the Nebraska case, namely, that no one should be compelled to support any place of worship, and that no sectarian instruction should be allowed in the public schools. The complaint was that the board permitted the teachers to read daily, during school hours, extracts from the King James version of the Bible, selected by the teachers. The court here also held that such Bible readings constituted religious worship, and thus made the schools a place of religious worship within the meaning of the constitution, and also constituted sectarian instruction. It was further held that it was immaterial that pupils who desired to do so, might withdraw during these exercises.

Practically the same question was before the supreme court of Michigan in the case of *Pfeifer* v. *Board of Education* (1898), 188 Mich. 560, 77 N. W. 250, 42 L. R. A. 536, where the relator sought to restrain the use in the public schools of a book made up of selections from the Bible. The constitution provided that no one should be required to attend or support any place of religious worship, or to pay taxes for the support of any minister of the gospel or teacher of religion, but it did not contain the prohibition, found in Wisconsin and Nebraska, against sectarian instruction. There was, however,

a provision that the legislature should not enlarge or diminish the civil or political rights, privileges and capacities of any person on account of his opinions or beliefs. The majority of the court held that the use of the book in question violated none of these provisions. It did not make the school a place of religious worship, or constitute the teacher a teacher of religion; neither did it enlarge or diminish any civil or political rights, privileges or capacities within the meaning of the constitutional provision.

In 1884 the question was before the supreme court of Iowa, in *Moore* v. *Monroe*, 64 Iowa, 367, 53 Am. Rep. 444. The constitution of Iowa contained the usual prohibitions against the establishment of religion or interfering with the free exercise thereof; and it also declared that no one should be required to attend any place of worship, or pay taxes for the support of any minister. A statute of the state provided that the Bible should not be excluded from any school, nor should any pupil be required to read it, contrary to the wishes of his parent or guardian. The action was to restrain the reading of the Bible, the repeating of the Lord's prayer, and the singing of religious songs. The plaintiff contended that such exercises made the school a place of worship which his children were required to attend, and which he was taxed to support. The court held his position not to be well taken, and dismissed his complaint with rather scant courtesy.

In 1854, in *Donahoe* v. *Richards*, 38 Me. 379. 61 Am. Dec. 256, it was held that a regulation of the school board that the English Bible be used as a reading book in the public schools, did not constitute an interference with religious belief, or result in any one's being "hurt, molested or restrained in his person, liberty or estate," for his religious belief, or subordinate one sect or denomination to another, within the meaning of the constitution of Maine, but it is obvious that no such question was here presented as in the cases first above referred to.

In *Board of Education* v. *Minor* (1873), 23 Ohio St. 211, 13 Am. Rep. 233, the situation was reversed. That was an action to restrain the Board from enforcing resolutions recently adopted directing the discontinuance of the practice theretofore prevailing, of opening the schools with Bible readings and appropriate singing. The lower court granted a perpetual injunction against the enforcement of the resolutions, but the supreme court reversed it because the constitution did not require the reading of the Bible, and the determination of the books to be used had been confided to the discretion of the board.

See also, *Nessle* v. *Hum*, 1 Ohio, N. P. 140; *Spiller* v. *Woburn*, 12 Allen, (Mass.) 127.

GARNISHMENT—LIABILITY OF GARNISHEE—JOINT DEMAND—ILLEGALITY—CONTINGENCY.—A recent case in Ohio involves several interesting questions as to the liability of garnishees. Several corporations entered into an illegal combination in restraint of trade, appointing a commissioner to collect all bills, pay all expenses, and divide the net proceeds according to the proportions agreed on. The whole business was conducted under a fictitious name —The Vapor Gas Co. The commissioner was summoned as garnishee in an action against one of the corporations composing the combination. He objected that the money in his hands belonged entirely to the Vapor Gas Co.,